

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

RALPH FRANCIS DELEO,	:	CIVIL ACTION NO. 1:15-CV-2321
	:	
Plaintiff	:	(Chief Judge Conner)
	:	
v.	:	
	:	
S. SPAULDING, WARDEN,	:	
	:	
Defendant	:	

ORDER

AND NOW, this 3rd day of June, 2016, upon consideration of the report (Doc. 12) of Magistrate Judge Joseph F. Saporito, Jr., recommending the court dismiss the amended complaint (Doc. 8) of *pro se* plaintiff Ralph Francis DeLeo (“DeLeo”) for failure to exhaust administrative remedies, (Doc. 12 at 4-11), and deny DeLeo’s motion (Doc. 11) for appointment of counsel as moot, (Doc. 12 at 11), as well as the court’s order (Doc. 13) adopting Judge Saporito’s report in full, and further upon consideration of DeLeo’s late-filed objection (Doc. 16) to Judge Saporito’s report, see FED. R. CIV. P. 72(b)(2), wherein DeLeo contends that he exhausted his administrative remedies while the instant action was pending, (see Doc. 14 at 1), and, following a *de novo* review of the contested portions of the report, see *Behar v. Pa. Dep’t of Transp.*, 791 F. Supp. 2d 383, 389 (M.D. Pa. 2011) (citing 28 U.S.C. § 636(b)(1)(C); *Sample v. Diecks*, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989)), and applying a clear error standard of review to the uncontested portions, see *Cruz v. Chater*, 990 F. Supp. 375, 376-78 (M.D. Pa. 1999), the court finding

Judge Saporito's analysis to be thorough, well-reasoned, and fully supported by the record, and finding DeLeo's objection (Doc. 16) to be without merit and squarely addressed by the report, which correctly observes that a prisoner's exhaustion of administrative remedies "must occur prior to filing suit, not while the suit is pending," (Doc. 12 at 9 (quoting Millbrook v. United States, 8 F. Supp. 3d 601, 611 (M.D. Pa. 2014))), it is hereby ORDERED that:

1. DeLeo's late-filed objection (Doc. 16) to the court's adoption of the report (Doc. 12) of Magistrate Judge Saporito is OVERRULED.
2. This case shall remain closed.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania